

CC

#08-300 EMR/SBR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

AUG 07 2012

JUDGE ROBERT W. GETTLEMAN
UNITED STATES DISTRICT COURT

SCOTT MOTTLOW, as Independent Executor of)
the Estate of SAMUEL MOTTLOW, Deceased,)

Plaintiff,)

No. 11-cv-00863

-vs-)

Judge Robert W. Gettleman

UNITED STATES OF AMERICA,)

Magistrate Judge Sheila M. Finnegan

Defendant.)

PETITION TO APPROVE WRONGFUL DEATH SETTLEMENT

In the matter of the Estate of SAMUEL MOTTLOW, Deceased, Plaintiff's counsel, RUBIN, MACHADO & ROSENBLUM, LTD., by and through Plaintiff's Administrator, SOCTT MOTTLOW, respectfully states as follows:

1. SCOTT MOTTLOW is the duly appointed and qualified personal representative of SAMUEL MOTTLOW, Deceased and the Decedent's Estate has a cause of action against the UNITED STATES OF AMERICA for wrongfully causing the death of the Decedent during the course of medical treatment in May of 2008.

2. Plaintiff has filed a Complaint against the UNITED STATES OF AMERICA under the Tort Claims Act and the parties have reached a settlement of TWO HUNDRED & SEVENTY THOUSAND DOLLARS (\$270,000.00). The complaint alleged theories of recovery based on both Wrongful Death and Survival; however, the damages proven deal exclusively with Wrongful Death and plaintiff believes the settlement should be allocated completely to Wrongful Death count.

3. The Decedent left surviving him as next of kin Nancy Mottlow, surviving spouse; Scott Mottlow, son; Dale Mottlow, son; Nick Mottlow, son, Maria Barrido, daughter; and Kim

Mottlow Lindahl, daughter. The Estate of SAMUEL MOTTLOW did retain the legal services of RUBIN, MACHADO & ROSENBLUM, LTD. to represent the Estate in the aforesaid claim for damages for the wrongful death of the Decedent, SAMUEL MOTTLOW, and the attorneys believe the settlement offer aforesaid is a fair and reasonable settlement of the claim for the damages for the wrongful death of the Decedent, and that it is in the best interests of the Decedent's Estate and the persons entitled to the proceeds thereof that the settlement offer of that the settlement offer of \$270,000.00 be accepted and that the Defendant, UNITED STATES OF AMERICA, be forever released. (A copy of the Release is attached as Exhibit "A".)

4. Pursuant to the statute regarding legal fees in Tort Claims Act as this case was litigated, the law firm of RUBIN, MACHADE & ROSENBLUM, LTD. is entitled to a legal fee of 25% of the settlement or \$67,500.00. In addition, the law firm of RUBIN, MACHADO & ROSENBLUM, LTD., spent \$3,909.59 for investigation, expert, litigation and Court costs in proceeding with this matter. (A coy of the expenses is attached as Exhibit "B".)

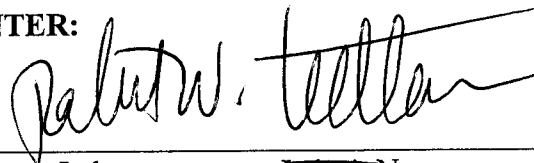
5. The heirs of SAMUEL MOTTLOW have agreed on the distribution of the remaining \$198,590.41 available for distribution after attorney's fees and costs. The heirs of SAMUEL MOTTLOW each believe that Nancy Mottlow, his wife, should receive \$100,000.00 of these settlement proceeds. Further, each believes that Maria Barrido, Nick Mottlow and Scott Mottlow should be provided \$3,200.00 each for their reimbursement of funeral costs of SAMUEL MOTTLOW. The remainder will be divided among the five children of SAMUEL MOTTLOW with each receiving \$17,798.08. As a Probate Estate has been opened for SAMUEL MOTTLOW, it is necessary for the Court hearing the case to approve the distribution of the settlement documents.

WHEREFORE, your Movant prays that an Order be entered as follows:

- a) Finding there is a settlement of the above referenced matter in the amount of \$270,000.00;
- b) That the settlement is fair and reasonable under the facts and circumstances of the case and attributing the damages to the Wrongful Death count.
- c) Finding that the law firm of RUBIN, MACHADO & ROSENBLUM, LTD. may receive as attorneys fees one-quarter of the total settlement amount and further the sum of \$3,909.59 for expenses for investigation, expert and Court costs;
- d) Finding that the percentage of loss of society of the next of kin as reflected in this settlement is appropriate;
- e) Dismissing the above captioned matter with prejudice.

AUGUST 14, 2012

ENTER:



Judge

Judge's No.

Respectfully submitted,

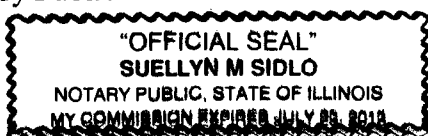


Edward M. Rubin
RUBIN, MACHADO & ROSENBLUM, LTD.
Attorney for Plaintiff
SCOTT MOTTLOW, as Independent Executor of
the Estate of SAMUEL MOTTLOW, Deceased
120 W. Madison Street, Suite 400
Chicago, Illinois 60602
(312) 327-1840
ARDC #031224662

Nancy Mottlow
NANCY MOTTLOW

Subscribed and Sworn to before me this
24th day of July, 2012.

Suellyn M Sidlo
Notary Public



SCOTT MOTTLOW

Subscribed and Sworn to before me this
____ day of _____, 2012.

Notary Public

DALE MOTTLOW

Subscribed and Sworn to before me this
____ day of _____, 2012.

Notary Public

NICK MOTTLOW

Subscribed and Sworn to before me this
____ day of _____, 2012.

Notary Public

MARIA BARRIDO

Subscribed and Sworn to before me this
____ day of _____, 2012.

Notary Public

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
____ day of _____, 2012.

Notary Public

NANCY MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

SCOTT MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public



DALE MOTTLOW

Subscribed and Sworn to before me this
27th day of July, 2012.



Notary Public



NICK MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

MARIA BARRIDO

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NANCY MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

SCOTT MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

DALE MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NICK MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

Maria Barrido

MARIA BARRIDO

Subscribed and Sworn to before me this
24 day of July, 2012.

Sarah L Marszewski

Notary Public

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
_____ day of _____, 2012.


Notary Public



NANCY MOTTLOW

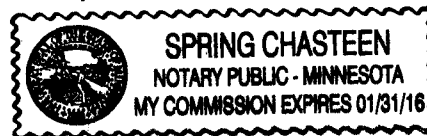
Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public


SCOTT MOTTLOW

Subscribed and Sworn to before me this
28 day of July, 2012.


Notary Public



DALE MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NICK MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

MARIA BARRIDO

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NANCY MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

SCOTT MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

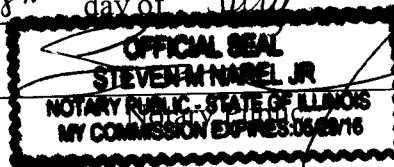
DALE MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NICK MOTTLOW

Subscribed and Sworn to before me this
28th day of *July*, 2012.



MARIA BARRIDO

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NANCY MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

SCOTT MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

DALE MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

NICK MOTTLOW

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

MARIA BARRIDO

Subscribed and Sworn to before me this
_____ day of _____, 2012.

Notary Public

Kim Mottlow

KIM MOTTLOW LINDAHL

Subscribed and Sworn to before me this
23 day of July, 2012.

Amyanne Geiger

Amyanne Geiger
Notary Public



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

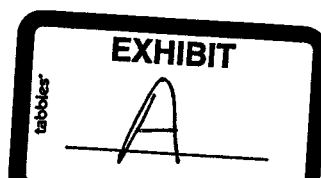
SCOTT MOTTLOW, as Independent)	
Executor of the Estate of SAMUEL)	
MOTTLOW, Deceased,)	
)	
Plaintiff,)	No. 11 C 863
)	
v.)	Judge Gettleman
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

It is hereby stipulated by and between the undersigned plaintiff and the United States of America, by and through their respective attorneys (collectively, the "parties"), as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Stipulation for Compromise Settlement and Release of Federal Tort Claims Act Claims Pursuant to 28 U.S.C. § 2677 (hereinafter "Stipulation").

2. The United States of America agrees to pay the cash sum of \$270,000 (two hundred seventy thousand and 00/100) (hereinafter "Settlement Amount"), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences



thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which plaintiff or his guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Plaintiff and his guardians, heirs, executors, administrators or assigns hereby agree to accept the settlement amount set forth in this Stipulation in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by plaintiff or his guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This Stipulation is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiff. This settlement is

entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney fees owed by the plaintiff will be paid out of the settlement amount and not in addition thereto. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney fees for services rendered in connection with this action shall not exceed 25 percent of the settlement amount.

6. The persons signing this Stipulation warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event the plaintiff is a minor, a legally incompetent adult, or a representative of an Estate or of a wrongful death beneficiary, the plaintiff must obtain court approval of the settlement at his expense from a court of competent jurisdiction. Plaintiff agrees to obtain such approval in a timely manner: time being of the essence. Plaintiff further agrees that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event plaintiff fails to obtain such court approval, the entire Stipulation and the compromise settlement are null and void.

7. Payment will be paid to Edward Rubin, Rubin, Machado & Rosenblum Ltd., 120 West Madison Street, Suite 400, Chicago, Illinois 60602, as counsel for plaintiff, who will assume responsibility for disbursement to Plaintiff. Plaintiff's attorney is responsible for distributing the settlement amount to the plaintiff, after paying or resolving any known lien or claim for payment or reimbursement arising out of the subject matter of this action. Plaintiff

agrees to dismissal of the above-captioned action with prejudice, with each party bearing its own fees, costs, and expenses.

8. The undersigned each acknowledge and represent that this Stipulation contains all the terms and conditions of this compromise settlement, that no promise or representation not contained in this Stipulation has been made to them, and that this Stipulation contains the entire understanding between the parties and contains all terms and conditions pertaining to the within compromise and settlement of the disputes referenced herein.

9. The parties agree that this Stipulation and any additional documents relating to this settlement, may be made public in their entirety, and the plaintiff expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

GARY S. SHAPIRO
Acting United States Attorney

By:

LASHONDA A. HUNT
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-4190
lashonda.hunt@usdoj.gov
Defendant United States of America

By:

Edward M. Rubin
Rubin, Machado & Rosenblum Ltd.
20 North Clark Street
Suite 3100
Chicago, IL 60602
Attorney for Plaintiff

By: _____
SCOTT MOTTLOW,
as Independent Executor of the Estate of Samuel
Mottlow, deceased
Plaintiff

Dated: July ___, 2012

1:12 PM

07/17/12

Accrual Basis

Rubin, Machado & Rosenblum Ltd.
Custom Transaction Detail Report
All Transactions

Date	Num	Name	Memo	Amount	Balance
5/13/2009	17022	Mottlow v. U.S. #08...	Circuit Clerk of Cook County	314.00	314.00
10/28/2011	20820	Mottlow v. U.S. #08...	Jeffrey D. Kopin, M.D.	500.00	814.00
12/23/2011	21079	Mottlow v. U.S. #08...	Andrew G. Israel, M.D.	1,137.50	1,951.50
3/19/2012	21496	Mottlow v. U.S. #08...	Lisit Court Reporting Service, ...	232.50	2,184.00
3/28/2012	21538	Mottlow v. U.S. #08...	A-1 Photo, LLC	38.33	2,222.33
4/18/2012	21636	Mottlow v. U.S. #08...	Federal Express	25.94	2,248.27
4/20/2012	21648	Mottlow v. U.S. #08...	A-1 Photo, LLC	21.90	2,270.17
4/20/2012	21649	Mottlow v. U.S. #08...	Kwik Kopy	90.12	2,360.29
4/30/2012	21687	Mottlow v. U.S. #08...	Shelley Plate Reporting, Inc.	337.00	2,697.29
4/30/2012	21687	Mottlow v. U.S. #08...	Shelley Plate Reporting, Inc.	521.50	3,218.79
5/25/2012	21792	Mottlow v. U.S. #08...	Halma-Jjilek Reporting, Inc.	294.45	3,513.24
7/5/2012	22010	Mottlow v. U.S. #08...	Shelley Plate Reporting, Inc.	372.50	3,885.74
7/10/2012	22028	Mottlow v. U.S. #08...	Federal Express	23.85	3,909.59
Total				3,909.59	3,909.59

